

## **Committee against Torture**

**Forty-eighth session**

7 May–1 June 2012

### **Consideration of reports submitted by States parties under article 19 of the Convention**

#### **ADVANCE UNEDITED VERSION**

#### **Concluding observations of the Committee against Torture**

##### **Armenia**

1. The Committee against Torture considered the third periodic report of Armenia (CAT/C/ARM/3), at its 1064<sup>th</sup> and 1067<sup>th</sup> meetings (CAT/C/SR.1064 and 1067), held on 10 and 11 May 2012. At its 1085<sup>th</sup> and 1086<sup>th</sup> meetings (CAT/C/SR.1085 and CAT/C/SR.1086), held on 28 and 29 May 2012, it adopted the following concluding observations.

##### **A. Introduction**

2. The Committee welcomes the submission of the third periodic report by the State party which follows the general guidelines regarding the form and contents of periodic reports. Nonetheless, it regrets the State party's delay of seven years in submitting the report.

3. The Committee welcomes the opportunity to examine compliance with the Convention with a high-level delegation from the State party. It appreciates Armenia's extensive written replies to the list of issues (CAT/C/ARM/Q/3 and Add.1) and the additional information provided orally and in writing by the delegation.

##### **B. Positive aspects**

4. The Committee welcomes the ratification by the State party of a number of international and regional instruments, including:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), in September 2006;

(b) International Convention for the Protection of All Persons from Enforced Disappearance, in January 2011;

(c) Convention on the Rights of Persons with Disabilities, in September 2010;

(d) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in September 2006;

(e) Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in armed conflict, in September 2005 and on the Sale of Children, Child Prostitution and Child Pornography, in June 2005.

(f) Protocols Nos. 6 and 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty, in September 2003 and May 2006.

5. The Committee welcomes the legislative measures taken during the period under review, including:

(a) The adoption in 2008 of a Law designating the Human Rights Defender as the national preventive mechanism provided for in the OP-CAT;

(b) The enactment in March 2002 of the Law on the Custody of Arrestees and Remand Prisoners;

(c) The adoption in December 2004 of the Penitentiary Code;

6. The Committee further welcomes:

(a) The establishment in 2006 of Public monitoring groups comprising governmental and non-governmental members; and

(b) The standing invitation extended to United Nations special procedures, in April 2006, and the visit by the Working Group on Arbitrary Detention in 2010.

7. The Committee welcomes the oral statement by the delegation that the State party will consider making the declaration envisaged under article 22 of the Convention, in order to recognize the competence of the Committee to receive and consider individual communications.

## **C. Principal subjects of concern and recommendations**

### **Allegations of torture and ill-treatment in police custody**

8. The Committee is seriously concerned by numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects in police custody, especially to extract confessions to be used in criminal proceedings (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate and effective steps to prevent acts of torture and ill-treatment throughout the country. The Committee urges the State party to promptly, thoroughly and impartially investigate all incidents of torture, ill-treatment and death in custody; prosecute those responsible and report publicly on the outcomes of such prosecutions. In addition, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescing to torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.**

### **Hazing and ill-treatment in the armed forces**

9. The Committee remains concerned by allegations that suspicious deaths continue to occur in the Armenian Armed Forces under noncombat conditions and that the practice of hazing and other mistreatment of conscripts by officers and fellow soldiers continues, conducted by or with the consent, acquiescence or approval of officers or other personnel. While noting the information provided by the delegation, the Committee remains concerned about reports that investigations carried out into many such incidents have been inadequate or absent, including the investigations into the deaths of Vardan Sevan, Artak Nazerian, and Artur Hakobian. The Committee is further concerned at the reported absence of effective investigations into allegations of abuse, such as those made against Vardan Martirosian, and the inadequate punishments of those convicted for the abuses (arts. 2, 4, 12, 13 and 16).

**The State party should reinforce measures to prohibit and eliminate hazing in the armed forces and ensure prompt, impartial and thorough investigation of all allegations of hazing and noncombat deaths in the military. Where evidence of hazing is found, the State party should ensure prosecution of all incidents and appropriate punishment of the perpetrators, make the results of those investigations public, and provide compensation and rehabilitation for victims, including through appropriate medical and psychological assistance.**

### **Definition, absolute prohibition and criminalization of torture**

10. The Committee is concerned that national legislation criminalizing “torture” (article 119 of the Criminal Code) does not conform to the definition of torture in accordance with article 1 of the Convention, and that “torture”, as presently defined by the State party, does not include crimes committed by public officials, only by individuals acting in a private capacity, with the result that no public official has ever been convicted of “torture” by the State party. It is also concerned by reports that officials have closed cases into allegations of “torture,” on the basis of reconciliation of the defendant with the victim. It is further concerned that current sanctions (a minimum of three years imprisonment, and up to seven years imprisonment with aggravating circumstances) do not reflect the gravity of the crime. Finally, it is concerned that several individuals convicted of “torture” or ill-treatment under other articles of the Criminal Code, have been granted amnesty (arts. 1 and 4).

**While appreciating the delegation’s oral statement that it intends to amend its Criminal Code, the Committee recommends that the State party ensure that the definition of torture is in full conformity with articles 1 and 4 of the Convention. The State party should also ensure that all public officials who engage in conduct that constitutes torture or ill-treatment are charged accordingly, and that the penalty for this crime reflects the gravity of the act of torture, as required by article 4 of the Convention. The State party should further ensure that persons convicted of torture or other acts amounting thereto under the Criminal Code are not subject to any statute of limitations, and that the authorities are obligated to investigate and punish persons for such acts regardless of assertions of reconciliation between the defendant(s) and the victim(s).**

### **Fundamental legal safeguards**

11. Notwithstanding the safeguards provided by law, in Government Decision No 574-N of June 2008 and Chief of Police instruction 12-C of April 2010, and by the Court of Cassation in its December 2009 decision in the case of *G. Mikaelyan*, the Committee expresses its serious concern about reports received regarding the State party’s failure in practice to afford all detainees all fundamental safeguards from the very outset of their *de facto* deprivation of liberty, including, timely access to a lawyer, medical doctor and the right to contact family members. The Committee is concerned by reports that police officials do not keep accurate records of all periods of deprivation of liberty, do not afford fundamental safeguards to individuals in detention, particularly persons deprived of their liberty for whom a protocol of detention has not been drawn up; do not effectively notify detainees of their rights at the time of detention, do not to adhere to the three-day time limit for transferring people deprived of their liberty from a police station to a detention facility and do not promptly bring detainees before a judge. The Committee also notes that the number of public defenders in the State party remains insufficient (art. 2).

**In the context of the current legislation reform, including the amendment of the Code of Criminal Procedure, the State party should take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their deprivation of liberty. These include rights to access to a lawyer, an independent medical examination, to notify a relative; to be informed of his/her rights, and to be brought promptly before a judge.**

**The State party should take measures to ensure audio or videotaping of all interrogations in police stations and detention facilities as a further preventive measure. The Committee encourages the State party to implement as soon as possible its plan to require police to create an electronic protocol of detention immediately upon the de facto deprivation of liberty of persons in police stations. The State party should ensure access to these records by lawyers and relatives of those detained.**

**The State party should increase the funding provided to the Public Defender Office of the Chamber of Advocates to ensure the availability of effective legal aid.**

## **Investigations and impunity**

12. The Committee is deeply concerned that allegations of torture and or ill-treatment committed by law enforcement officials and military personnel are not promptly, impartially, nor effectively investigated and prosecuted. The Committee is particularly concerned by reports that the Office of the Prosecutor directs the police to investigate some claims of torture and ill-treatment allegedly perpetrated by police officers, rather than assign these complaints to an independent investigation service. In this regard, it is concerned that the Office of the Prosecutor does not regularly ensure that different prosecutors supervise the investigation of a crime and allegations of torture made against police officials by the suspected perpetrator of that crime. The Committee is also concerned that the Special Investigation Service (SIS) has been unable to gather sufficient evidence to identify the perpetrators in a number of cases in which torture or ill-treatment by officials was alleged, leading to concerns regarding its effectiveness. The Committee is further concerned by reports that officials alleged to have committed torture or ill-treatment are not immediately suspended from their duties or transferred as appropriate for the duration of the investigation, particularly if there is a risk that they may otherwise be in a position to repeat the alleged act or to obstruct the investigation (arts. 2, 11, 12, 13 and 16).

### **The State party should:**

**(a) Take concrete steps to ensure prompt, thorough, and impartial investigations into allegations of torture and ill-treatment by law enforcement officials and military personnel leading to the prosecution and punishment of those responsible with penalties that are consistent with the gravity of the act committed;**

**(b) Ensure that all investigations into crimes involving public officials are undertaken by an independent and effective body;**

**(c) Ensure that all officials alleged to be responsible for violations of the Convention are suspended from their duties while any investigation into the allegations is in progress.**

**The Committee urges the State party to provide information on the number of complaints filed against public officials alleging acts that constitute torture or ill-treatment under the Convention, as well as information on the results of investigations into those complaints and any proceedings undertaken, at both the penal and disciplinary levels. This information should describe each relevant allegation and indicate the authority that undertook the investigation.**

## **Deaths in custody**

13. The Committee is concerned at reports from the State party and non-governmental organizations on deaths in custody, including the deaths in police custody of Vahan Khalafyan and Levon Gulyan (arts. 2, 11, 12 and 16).

**The Committee urges the State party to investigate promptly, impartially and effectively all deaths of detainees, assessing any liability of public officials, and ensure punishment of the perpetrators and compensation to the families of the victims. The Committee requests that the State party provide comprehensive updated information on all reported cases of deaths in custody, including location, cause of death and results of any investigations undertaken into such deaths, including punishment of perpetrators or compensation to relatives of victims.**

## **Complaints, reprisals, and protection of victims, witnesses, and human rights defenders**

14. The Committee notes with concern reports that victims of and witnesses to torture and ill-treatment do not file complaints with the authorities because they fear retaliation. It also notes reports that human rights defenders, and journalists, have experienced threats and

intimidation as a result of their work, and that the State party has taken few steps to ensure their protection (arts. 2, 11, 12, 13, 15 and 16).

**The Committee urges the State party to establish an effective mechanism to facilitate the submission of complaints by victims and witnesses of torture and ill-treatment to public authorities, and to ensure in practice that complainants are protected against any ill-treatment, intimidation, or reprisals as a consequence of their complaint. The State party should take all necessary steps to ensure that human rights defenders, and journalists, are protected from any intimidation or violence.**

#### **Redress, including compensation and rehabilitation**

15. While noting that the State party has paid compensation to victims further to the European Court of Human Rights ruling, the Committee regrets the lack of data provided by the State party regarding the amount of any compensation awards made by the courts to victims of violations of the Convention, including individuals who were denied fundamental safeguards or subjected to torture or ill-treatment in detention. The Committee is concerned that the law does not provide means of reparation for victims of torture other than financial compensation. The Committee also notes the lack of information on any treatment and social rehabilitation services, including medical and psychosocial rehabilitation, provided to victims (art. 14).

**The State party should strengthen its efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible. The State party should amend its legislation to include explicit provisions on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture in accordance with article 14 of the Convention. It should provide to the Committee information about measures taken in this regard, including allocation of resources for the effective functioning of rehabilitation programmes.**

#### **Coerced confessions**

16. The Committee is concerned by allegations that forced confessions are used as evidence in courts in the State party. The Committee is further concerned by reports that courts have failed to stay criminal proceedings in which the defendant has alleged that a confession was obtained through torture and request thorough investigations. The Committee is further concerned about the lack of information provided regarding cases in which the State party's courts deemed confessions to be inadmissible as evidence on the grounds that they were obtained through torture (art. 2, 11, 15 and 16).

**The Committee urges the State party to ensure that, in practice, statements obtained by torture are not invoked as evidence in any proceedings. The State party should ensure that, in any case in which a person alleges that a confession was obtained through torture, the proceedings are suspended until the claim has been thoroughly investigated. The Committee urges the State party to review cases of convictions based solely on confessions.**

**The Committee urges the State party to firmly combat any use of torture to extract confessions, and ensure that in practice confessions obtained through torture are never used as evidence in judicial proceedings. The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with article 15 of the Convention and provide information on whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Independence of the judiciary**

17. The Committee is concerned by reports of the lack of independence of the judiciary, and particularly by the fact that responsibility for appointing, promoting and dismissing

judges rests with the President and executive branch. The Committee is further concerned that the State party's legislation provides for criminal liability against judges for adopting an unjust judgment or other judicial act (arts. 2, 12 and 13).

**The State party should take measures to ensure the full independence and impartiality of the judiciary in the performance of its functions, and review the regime of appointment, promotion and dismissal of judges in line with the relevant international standards, including the Basic Principles on the Independence of the Judiciary, which provides, in part that judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.**

#### **Violence against women, including trafficking**

18. The Committee is concerned by the reported extent of physical and sexual violence against women. Furthermore, it is concerned women rarely report about ill-treatment and violence against them to the police. The Committee is particularly concerned by reports that there are no State-funded shelters available for women victims of domestic violence, which is not criminalized in the State party. The Committee regrets that the State party did not provide information on reparation and compensation, including rehabilitation, provided for victims of violence against women. While noting favourably that various national action plans for combatting trafficking in human beings have been adopted during the period under consideration, the Committee is concerned by reports that it remains both a source and destination country for women and girls subjected to trafficking (arts. 2, 12, 13 and 16).

**The State party should strengthen its efforts to prevent, combat and punish violence against women and children, in particular domestic violence, inter alia, by amending its criminal legislation to make domestic violence a separate crime, conducting awareness-raising campaigns and training on domestic violence for law enforcement personnel and for the public at large, and providing victims of violence with immediate protection and redress, in particular rehabilitation.**

**It should also create adequate conditions for victims of violence against women, including domestic violence and trafficking, to exercise their right to make complaints. It should thoroughly investigate all allegations of domestic violence and trafficking, prosecute and punish all perpetrators.**

**The Committee recommends that State party ensure the implementation of the 2008 National Referral Mechanism for Trafficked Persons and to provide services to victims of trafficking, including those related to provision of shelter, access to professional medical and psychological assistance, and training programmes.**

#### **Conditions of detention**

19. While welcoming current efforts by the State party to improve conditions of detention in prisons, including refurbishing of some facilities and work on the construction of a new prison, the Committee remains concerned at continued reports of severe overcrowding, understaffing and inadequate food and health care. The Committee is concerned by allegations of corruption in prison including by groups of prisoners in whose behaviour prison officials appear to acquiesce. It is also concerned by reports that some victims of violence or discrimination are singled out by such groups of prisoners for abusive treatment based on perceived sexual orientation or nationality. The Committee regrets that there has not been a significant increase in the implementation of alternative measures to detention by the courts and the lack of a confidential mechanism for detainees to make complaints of torture or ill-treatment. The Committee notes the establishment of public monitoring groups, consisting of representatives of non-governmental organizations, mandated to carry out monitoring of penitentiary institutions and police stations. However, the Committee is concerned that the Police Monitoring Group is not granted full access to police stations (arts. 2, 11 and 16).

**The State party should continue to take effective measures to improve conditions in places of detention and to reduce overcrowding in such places. The Committee recommends that the State party increase its efforts to remedy prison overcrowding, including through the application of alternative measures to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and to provide the Committee with information on any probation service to be established in charge of alternative punishment, conditional release and rehabilitation.**

**The State party should take necessary measures to eliminate any form of violence or discrimination against detainees based on sexual orientation or nationality, including all abusive and discriminatory measures conducted by prison inmates against other detainees. It should establish a confidential system for receiving and processing complaints regarding torture or ill-treatment and ensure that it is established in all places of deprivation of liberty. The State party should further ensure that all complaints received are promptly, impartially, and effectively investigated, and the perpetrators punished with appropriate penalties.**

**The State party should ensure that the Police Monitoring Group has access to and the ability to conduct unannounced visits to all police stations. It should also take effective measures to keep under systematic review all places of detention, including the existing and available health services therein, and should take measures to eliminate corruption in prisons.**

#### **Post-electoral violence**

20. The Committee notes with concern that despite efforts undertaken by the State party to investigate allegations of use of excessive and indiscriminate force by police in responding to clashes between police and protesters following the March 2010 elections, the investigation by the SIS into the 10 deaths that occurred during the clashes remains ongoing. The Committee is also concerned about persistent allegations that in the immediate aftermath of the violence, many individuals were arbitrarily detained, denied the right to access to a lawyer of their choice, and subjected to ill-treatment in custody, and that these allegations have not been adequately investigated (arts. 2, 12, 13 and 16).

**The State party should expedite the investigation into the 10 deaths resulting from the violence following the March 2010 elections and ensure that any law enforcement official found to have used excessive or indiscriminate force is prosecuted and punished with sentences appropriate to the gravity of the crime, and that the families of victims are provided with redress, including compensation. The State party should also ensure that broader allegations of excessive and indiscriminate use of force and of ill-treatment and denial of safeguards by the police in the aftermath of the March 2010 election are independently and effectively investigated. The State party should take measures to ensure that individuals believed to have knowledge of the March 2010 events are effectively protected from reprisals and intimidation.**

#### **Juvenile justice**

21. The Committee regrets the absence of juvenile justice, including juvenile courts. The Committee notes the establishment of a public monitoring group, consisting of representatives of non-governmental organizations, mandated to carry out monitoring of special boarding schools. However, the Committee is concerned about the reported practice of holding juvenile detainees in solitary confinement for up to 10 days as a disciplinary sanction at such special schools (arts. 11, 12 and 16).

**The Committee encourages the State party to establish a juvenile justice system, and particularly to establish a specialized juvenile division or jurisdiction with judges with professional competence to deal with juvenile cases and other judicial staff, and ensure its proper functioning in compliance with international standards. The State party should closely monitor the situation of special schools to ensure that children are not**

**subjected to intimidation, ill-treatment, or violence. The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. Solitary confinement of juveniles should be limited to very exceptional cases.**

#### **Effectiveness of the Ombudsman**

22. The Committee is concerned by the lack of adequate resources for the Human Rights Defender, who has been designated the National Preventive Mechanism of the Republic of Armenia, to carry out his mandate effectively. It is also concerned that some recommendations made by the Human Rights Defender to the authorities are not implemented (arts. 2 and 12).

**The Committee recommends that the State party provide necessary resources for the Human Rights Defender to carry out its double mandate as the Ombudsman and National Preventive Mechanism of the Republic of Armenia in an effective manner in accordance with the guidelines on national preventive mechanisms established by the Subcommittee on Prevention of Torture. The State party should ensure that law enforcement, prosecutorial, military, and prison personnel cooperate with the Defender and take steps to implement recommendations.**

#### **Alternative Service**

23. While taking note of the draft law to amend and supplement the law on alternative military service, the Committee remains concerned by the State party's acknowledgement that it continues to hold many individuals in detention for evading military service, some of whom are reportedly conscientious objectors who objected to the alternative service on grounds that it is supervised exclusively by military personnel (art. 16).

**The Committee recommends that the State party adopt the draft law on alternative military service and that it reviews the detention of all individuals imprisoned for refusing to perform the alternative service on religious grounds.**

#### **Non-Refoulement**

24. The Committee regrets the lack of information regarding safeguards against torture in extradition and expulsion. Furthermore, it is concerned about the lack of information on any diplomatic assurances secured by the State party in its return of applicants for asylum to neighbouring countries and in the implementation of the reported extradition agreement between the National Police of Armenia and the Police of the Russian Federation, and data concerning the number of people extradited pursuant to that agreement. The Committee is concerned by reports that the State party issued extradition warrants without allowing those concerned to exercise their right to appeal in accordance with article 474 (2) of the Criminal Procedure Code and without complying with the normal procedures for extradition (art. 3).

**The State party should refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to torture. The State party should provide detailed information to the Committee on all cases where such assurances have been provided.**

**The Committee also recommends that the State party respects its non-refoulement obligations under article 3 of the Convention, including the right to appeal the issuance of an extradition warrant, as provided for in article 479 (2) of the Criminal Procedure Code.**

#### **Training**

25. The Committee welcomes the organization of human rights training programmes for law enforcement and military officials during the period under consideration. However, the Committee regrets the lack of information on monitoring and evaluation of the impact of



these training programmes in reducing incidents of torture and ill-treatment. The Committee also regrets the lack of information on training on the use of the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment) in such training programmes (art. 10).

**The State party should strengthen training programmes for law enforcement officials, military personnel and prison staff on the requirements of the Convention and to assess the impact of such training programmes. The State party should ensure that relevant officials receive training on the use of the Istanbul Protocol to identify signs of torture and ill-treatment.**

26. The Committee invites the State party to consider ratifying the other core United Nations human rights treaties to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

27. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

28. The State party is invited to update its common core document HRI/CORE/1/Add.57, in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

29. The Committee requests the State party to provide, by 1 June 2013, follow-up information in response to the Committee's recommendations related to (1) ensuring or strengthening legal safeguards for persons detained, (2) conducting, prompt, impartial and effective investigations, and (3) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8, 11, and 12 of the present document.

30. The State party is invited to submit its next report, which will be the fourth periodic report, by 1 June 2016. To that purpose, the Committee invites the State party to accept, by 1 June 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.